83 - 1869

No._____

Office - Supreme Court, U.S.
FILED
MAY 15 1984
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

ROSE STERNGASS, and, RUBIN STERNGASS,

Plaintiffs/Appellants,

-vs-

ROBERT H. BOWMAN, Personally and as Building Inspector for the Town of Clarkstown, in Rockland County, N.Y.; THE TOWN BOARDS OF THE TOWN OF CLARKS-TOWN, as constituted on July 11, 1979 and May 28, 1982 in their official capacity, personally, and individually; et al.

Defendants/Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Rose Sterngass, pro se;
Rubin Sterngass, pro se.
67 Ridge Road,
Valley Cottage, NY 10989
914-268-2558

31 pp

QUESTIONS PRESENTED:

#1. CAN A SOLICITATION, MADE BY THE BUILDING INSPECTOR, TO AN INDIVIDUAL WHO CHOSE NOT TO PARTICIPATE, WITH PRIMA FACIA EVIDENCE IN SUPPORT, SUFFICIENT TO OVERCOME THE PRUDENTIAL LIMITATION OF LACK OF STANDING, & REVERSE THE DISTRICT COURT'S SUMMARY DISMISSAL OF THE COMPLAINT?

#2. DOES AN EMPLOYEE OF A TRANSIENT TEMPORARY HOUSING FACILITY, THAT IS AVAILABLE TO THE PUBLIC & ENGAGED IN INTER-STATE HIGHWAY COMMERCE, OBTAIN CIVIL RIGHTS PROTECTION FOR ADHERING TO THE LETTER & INTENT OF THE LAW, AS MANDATED UNDER EXECUTIVE ORDER, #11063, & THE THEN EXISTING OR ENSUING FEDERAL LAWS?

#3. IS SUMMARY DISMISSAL OF A PRO SE COMPLAINT ON THE GROUNDS OF LACK OF STANDING, PROPER DUE PROCESS, WHEN THE DISTRICT COURT DID NOT REQUIRE A PRO SE PLAINTIFF, WHO IS THE SOLE OWNER OF A CORPORATION, TO ADD THAT CORPORATION AS A PLAINTIFF TO THIS ACTION?

#4. ON MOTION TO RE-HEAR, WAS COURT OF APPEALS CORRECT IN DENYING:

A. ONE PLAINTIFF TO SEVER HIS COMPLAINT: &

B. OTHER PLAINTIFF TO ADD HER CORPORATIONS AS PLAINTIFFS?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984 No._____

ROSE STERNGASS, pro se; and,
RUBIN STERNGASS, pro se;

Petitioners;

-vs-

ROBERT H. BOWMAN, Personally and as Building Inspector for the Town of Clarkstown, in Rockland County, N.Y.; et al.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Petitioner, Rubin Sterngass, and Rose Sterngass, respectfully pray that a Writ of Certiorari issue to review the Decision and Order of the United States Court of Appeals for the Second Circuit, dated 11/9/83; and then upon a Motion for Re-Hearing dated 11/21/83, and the Court's Decision & Order, 2/17/84.

J U R I S D I C T I O N

The judgment of the Circuit Court of Appeals for the Second Circuit, was entered and filed on 2/16 & 2/17/84; which denied petitioner's timely Motion for Re-Hearing, dated 11/21/83, of the Order/Decision of the same Circuit Court dated, 11/9/83; which thereby affirmed the Decision/Order of the District Court by granting the defendants Motion for Summary Judgment, and the Dismissal of the petitioner's complaint, as per Order of said District Court, dated 4/19/83.

The jurisdiction of this Court is invoked under 28 U.S.C. #1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED:

Petitioners seek re-dress of their personal violations of Constitutional Rights under Titles 42; 28; & 18.

STATEMENT OF THE CASE:

The jurisdiction of the District Court was invoked because questions arose under the Civil Rights Act and the mandate of Presidential Decree of our deceased President, John F. Kennedy, identified as Executive Order #11063, dated 11/20/62; pertinent parts in the appendix, along with 42 USC 1988, in pertinent part.

The petitioners sought re-dress at the District Court, for violations to their personal Civil Rights, when acting in their capacity as employees, in the daily operations of contiguous motels, that offered semi-permanent and emergency housing facilities to the public. These were in existance prior to the 1962 mandate.

The transient facility was located 8 miles morth of the New Jersey border, in New York, on inter-state route 9W.

In the year of 1971, the then newly appointed Building Inspector for the Town of Clarkstown, defendant Robert Bowman, did openly solicit a "per unit" payment from petitioner, Rubin, who immediately refused to participate, and then faced the ire of the building inspector who openly stated "You'll pay me now, or you'll pay later anyhow".

The building inspector brought one corporation to trial for building code violations, therein naming Rubin (pro se petitioner) as a defendant personally. Trial court held in favor of us. On reversal by the appellate court, we then were heard by the New York State Court of Appeals; which upheld the trial court, (circa 1974 to 1976). The corporation was represented by Counsel, which is a requirment in New York; Rubin appeared and argued pro se.

Upon information and belief the Fedearal Bureau of Investigation were in an active investigationof Robert Bowman, on an un-related matter, arising in the Eastern District of New York, in 1977, known toBowman, andfound guilty of perjury to a Grand Jury, on 8/4/80; the United States Supreme Court denied Certiorari on 3/20/81.

Prior to his trial, on 5/22/79, Bowman and his newly appointed Fire Inspector Pappenmeyer, ordered the immediate removal of all buildings on both corporate titled properties, by posting such order on the office entry door and property. Causing much personal grievous harm to both petitioners. Then, through Town Board action on 7/11/79, based upon the testimony of Bowman & Pappenmeyer, the properties were demolished by 5/1/81.

The exorbitant & illegal taxation on these properties, caused the County to take title, after non-payment of taxes.

ARGUMENT IN SUPPORT OF THE ALLOWANCE OF THE WRIT OF CERTIORARI:

The District Court held that the 2 pro se plaintiffs, husband and wife, had lack of standing. Holding that the violations that allegedly occurred to the 2 corporations, which is solely owned by the wife, without establishing any claim of injury to the plaintiffs personally.

The Court of Appeals affirmed, stating that the thorough decision of the court was correct with the exceptionthat the appeals court did acknowledge that the complaint alleged that the husband was only an employee and not as stated by the district court.

On Motions to Re-Hear to the Court of Appeals, the court denied the wife's request for permission to amend the complaint by adding the corporations as plaintiffs. The Court also denied husband's request for a severance, as to over-come defect.

The decision of the district court is in direct conflict with the allegations and materials in support.

Further, the court held that an only stock-holder of a corporation, could not claim the rights of the corporation as their own. Such holding was contrary to the allegations and facts portrayed by the complaint and the Reply of 12/15/82. appendix:(A-4)

Additionally, summary dismissal by the district court without requiring of the plaintiffs that they either amend the complaintby adding the corporations, and/or by clarifying the allegations, is contrary to Due Process. (appendix:A-11)

We have asserted previously, elsewhere, that, we respectfully submit, that the district court read only the complaint and thereby summarily dismissed. Such treatment should not occur to pro se applicants for Civil Rights re-dress.

QUESTION # 1:

CAN A SOLICITATION, MADE BY THE BUILDING INSPECTOR, TO AN INDIVIDUAL WHO CHOSE NOT TO PRATICIPATE, WITH PRIMA FACIA EVIDENCE IN SUPPORT, SUFFICIENT TO OVER-COME THE PRUDENTIAL LIMITATION OF LACK OF STANDING, & REVERSE THE DISTRICT COURT'S SUMMARY DISMISSAL OF THE COMPLAINT?

ARGUMENTS IN SUPPORT:

Q.#1. This issue was alleged in the complaint; in the reply; and in argument at the Court of Appeals; and again on Motion to Re-Hear. We assert that such solicitation, even though we did not participate, is supportive as a threat to our personal liberties, and should thus permit access for Civil Rights re-dress. We should not be summarily denied with dismissal of the complaint, on the ground of lack of standing.

Appendix: A-5 11 C.J.S. Bribery:

QUESTION #2:

DOES AN EMPLOYEE OF A TRANSIENT TEMPORARY HOUSING FACILITY, THAT IS AVAILABLE TO THE PUBLIC & ENGAGED IN INTER-STATE HIGHWAY COMMERCE, OBTAIN CIVIL RIGHTS PROTECTION FOR ADHERING TO THE LETTER & INTENT OF THE LAW, AS MANDATED UNDER EXECUTIVE ORDER, #11063, & THE THEN EXISTING OR ENSUING FEDERAL LAWS?

Q. #2. This issue has never come before this Court.

The primary persons aggrieved were the recipients of temporary housing , who were then receiving housing assistance from Federal or State agencies, and who sought out such housing at our facility. However, such class would not be inclined to complain, as long as they were accepted for housing assistance and, the temporary housing that we offered was then available to them, at our facility.

Racial and class discrimination against the operators & recipients of such housing facility, by the State, through the building inspector's efforts,were personally motivated; between 1971 & 1981,the incressant enforcement of Town Codes, caused the physical demolition of a family operated business.(since 1944).

The building inspector was dismissed after appeals of his conviction were exhausted (circ 1981). Appendix, A-14

QUESTION # 3:

IS SUMMARY DISMISSAL OF A PRO SE COMPLAINT ON THE GROUNDS OF LACK OF STANDING, PROPER DUE PROCESS, WHEN THE DISTRICT COURT DID NOT REQUIRE A PRO SE PLAINTIFF, WHO IS THE SOLE OWNER OF A CORPORATION, TO ADD THAT CORPORATION AS A PLAINTIFF TO THIS ACTION?

QUESTION #3.

The trial court judge, acted to the plaintiffs detriment, in violation of their Due Process. Specifically, the respondents claimed that the service made by the US Marshall, did not create personal service/jurisdiction over all or some of the named respondents.

I brought this issue to the pro se clerk, who wrote to the judge and thereby a pre-trial conferance was set. (appendix: A-10)

Warth v Seldin... (appendix: A-11).

At such conferance the only issue discussed was the Marshall's service of the complaint. The court then required that the respondents make a motion to bring that issue before the court.

Instead of doing as directed, the respondents made a motion for summary dismissal , which was proceedurally defective as to the Due Process of this case. The court was aware of this as I argued so in my affidavits in opposition to the motion.

QUESTION #4:

ON MOTION TO RE HEAR, WAS COURT OF APPEALS CORRECT IN DENYING:

A. ONE PLAINTIFF TO SEVER HIS COMPLAINT: &

B. OTHER PLAINTIFF TO ADD HER CORPORATIONS AS PLAINTIFFS?

QUESTION #4.

We respectfully assert that the Court of Appeals could have granted the Motions for a Re-Hearing, by so instructing the District Court to permit the one plaintiff to amend their complaint, and, the other plaintiff to sever his cause.

That proceedure, or anything that is similiar, seems to us as being the most expeditious manner by which the matter could be heard on its merits. The prudential limitation of lack of standing, is an area that is imposed upon the lower court, and, due to an over burdened calendar, they succumb.

We respectfully assert that this Supreme Court on other occasions has struggled with this issue. (appendix:A-12,13) Valley Forge 454 US 464

We would normally not be knocking on the door of this court; but, we feel strongly about the issues raised.

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 16th day of February one thousand nine hundred and eighty-four.

ROSE STERNGASS and RUBIN STERNGASS,

Plaintiffs-Appellant,

v. No. 83-7372

ROBERT H. BOWMAN, Personally and as Building Inspector for the Town of Clarkstown, in Rockland County, New York; THE TOWN BOARDS OF THE TOWN CLARKSTOWN, as constituted on July 11, 1979 and May 28, 1982 in their official capacity, personally, and individually; et. al.,

Defendants-Appellees.

Petitions for a rehearing having been filed herein by plaintiff-appellant, Rose Sterngass, pro-se, and plaintiff-appellant, Rubi Sterngass, pro-se,

Upon consideration thereof, it is

Ordered that said petitions be and they hereby are DENIED.

It is further ordered that the motion filed by plaintiff-appellant, Rubin Sterngass, for an order of severance is DENIED.

A. Daniel Fusaro,
by Francis X. Gindhart,
Chief Deputy Clerk

STAMPED AS FILED:
Feb. 16, 1984

O P I N I O N B E L O W:

Appeal from the United States District Court for the Southern District of N.Y.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of N.Y., and was argued by appellants pro se and by appellees by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is AFFIRMED.

Appellants' pro se complaint alleged five claims of denial of federally protected rights concerning actions of various officials with respect to property owned by one or more corporations of which the appellants, or one of them, were either shareholder or employee, or

both. The District Court correctly dismissed the complaint for lack of standing, holding that the appellants were not entitled to complain of wrongs allegedly done to their corporations or to property owned by those corporations.

Smith v.Martin, 542 F.2d 688 (6th.Cir.) (1976) cert. denied, 431 US 905(1977);

Erlich v. Glasner, 418 F.2d 226 (9th Cir. 1969).

The judgment is affirmed substantially for the reasons set forth in Judge Duffy's thorough opinion.

Filed: 11/9/83; Index #83-7372

PLAINTIFFS REPLY, 12/15/82:

"("B" page 4-5): In our complaint, violation #3, we stated that Robert Bowman caused directly and indirectly, the denial of equal housing, etc, (see complaint page 17). We contend that such violations (were) done to thwart the actual availability of temporary housing that we offered openly to the public.... without discrimination as to race, creed, color or ethnic groups, or other members of a class...was actually in fact in violation of our personal liberties to so provide the temporary housing so needed from the post war years forward."
under-lining was added.

QUESTION # 1.

Bribery 11 C.J.S., Sec. 7, Solicitation:

"Solicitation of a bribe by an officer is an offense.....The offense consists of the corrupt solicitation by an officer of a valuable thing with the intent to be thereby influenced in respect of his official duties, and the crime is complete when the solicitation is made; hence, the offense may be committed although the person solicited refuses to cooperate...."

Sec. 5, Persons Liable:

"A person who aids and abets another to bribe an officer in violation of law may be held equally guilty with his principal".....

42 USC 1988: QUESTION #1.

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18 for the protection of all persons in the United States in their Civil Rights, and for their vindication, shall be exercised and enforced in conformit with the laws of the United States".

QUESTION # 2.

Presidential Decree of President John F. Kennedy; Executive Order #11063:(11/20/62)

"Whereas the granting of Federal assistance for the provision, re-habilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed or national origin is un-fair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws".....

"Whereas the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, re-habilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans"....

UNITED STATES 91 C.J.S. (sec. 30)
Proclamations & Orders:

An executive order, promulgated by the president pursuant to authority delegated to him by congress, has the effect of a statute and is a part of the law of the land, and hence it is a source of public policy.

QUESTION #2. Jones v Alfred H. Mayer Co. 255 F. Supp. 115 (1966) @ 119

"The Fourteenth Amendment protects the individual against state action"....

"Except in situations involving state action, the Civil Rights Act of 1964, insofar as here relevant, pertains to places of public accommodation"....

...."And Mr. Justice Douglas in his concurring opinion (379 US 280, 85 S.Ct.370) also referring to his concurring opinion in Bell, supra, states that his position is that "the right to be free of discriminatory treatment (based on race) in places of public accommodation...whether intrastate or interstate...is a right guaranteed against state action by the Fourteenth Amendment".....

...."He also called attention to the definition of "state action" in the Civil Rights Act of 1964, which defines it, inter alia, as discrimination "enforced by official of the state".

QUESTION #3.

Hon. Raymond F. Burghardt
The Clerk of the Court
United States District Cour for the
Southern District of New York
New York, New York 10007

September 16, 1982

Re: Sterngass, pro se vs Bowman, et al
82 Civ. 4303 (KTD)

Dear Sir;

Enclosed herein are the following documents in connection with the above entitled action:

1. Plaintiffs Reply to defendants Answer; and, Plaintiffs Answer to defendants Counter claim.

2. Plaintiffs First Set of Interrogatories to defendants.

Please file them and, advise if there is something wrong.

very truly yours,

Rubin Sterngass,
Plaintiff, pro se

RS:car

Appears on page 64 of plaintiff's brief to the Court of Appeals
#83-7372

United States Government
Memorandum
"Received in Chambers"
10/6/82
Kevin Thomas Duffy

Date: October 6, 1982

Reply to
Attn of: Debra Ruth Wolin, pro se
staff attorney

Subject: Sterngass v Bowman,
82 Civ. 4303 (KTD)

To: Hon. Kevin T. Duffy

Your Honor:

I am in receipt of the enclosed correspondence from plaintiff in which she requests a conference with the court to resolve the matter of personal jurisdiction. It appears that defendants' counsel does not recognize the validity of certified mail service and that there are other problems with service as well.

I would appreciate your Honor's guidance as to how to answer this.

Respectfully,

(signed)
Debra Ruth Wolin

QUESTION #3: Warth v. Seldin 422US501 (decided 6/25/75)

....."further preliminary matter requires discussion. For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party. E.g., Jenkins v McKeithen, 395 US411 @421-422 (1969). At the same time, it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing. If, after this opportunity, the plaintiffs standing does not adequately appear from all materials of record, the complaint must be dismissed."

QUESTION #4. Valley Forge v Americans 454 US 464

@472: ...."Art. III requires the party who invokes the court's authority to'show that he personally has suffered some actual or threateded injury as a result of the putatively illegal conduct of the defendant', Gladstone, Realtors v. Village of Bellwood, 441 US 91, 99 (1979), and that the injury 'fairly can be traced to the challenged action' and 'is likely to be re-dressed by a favorable decision', Simon v Eastern Kentucky Welfare Rights 426 US 26, 38, 41 (1976).

@473:..."The exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, is therefore restricted to litigants who can show 'injury in fact' resulting from the action which they seek to have the court adjudicate".

@491: The dissent of J.Brennan:(joined by) Justice Marshall & Justice Blackmun

"Cases of this Court have identified the two essential components of this 'personal stake' requirement. Plaintiff must have suffered, or be threatened with, some 'distinct and palpable injury', Warth v. Seldin, at 501. In addition, there must be some causal connection between plaintiff's asserted injury and defendant's challenged action. Simon v. Eastern Kentucky, at 41; Arlington Heights v. Metropolitan Housing, 429 US 252, 261 (1977). The Constitution requires....both requirements are met before proceeding to exercise its authority....whether the form of relief requested is equitable or monetary".

Dissent of Justice Brennan; Justice Marshall; & Justice Blackmun: cont'd.

(foot-note #5 @493:)
"When the Constitution makes it clear that a particular person is to be protected from a particular form of government action, then that person has a 'right' to be free of that action; when that right is infringed, then there is injury, and a personal stake, within the meaning of Article III".

@493:
....."It is quite another matter to employ the rhetoric of 'standing' to deprive a ~~person,~~ whose interest is clearly protected by the law, of the opportunity to prove that his own rights have been violated. It is precisely that dissembling enterprise that the Court indulges today".

@494:
....."The Framers did not, of course, employ the modern vocabulary of standing".

(foot-note #6) As Madison noted, if a bill of rights were "incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an inpenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights". 1 Annals of Cong. 439 (1789)

NEWS ARTICLE: THE JOURNAL NEWS 12/1/82

"BOWMAN APPEALS CONVICTION"

....."A federal jury in Westbury, NY, found Bowman guilty of perjury on 8/4/80, after the former owner of a Congers restaurant and erstwhile operators of a New City produce stand testified that Bowman had dropped plans to cite them for building and zoning violations after accepting bribes ranging from $200 to $500."....

(2)

No. 83-1869 SUPPLEMENTAL APPENDIX:

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

Supreme Court, U.S.
FILED
MAY 23 1984
ALEXANDER L. STEVAS
CLERK

ROSE STERNGASS, and, RUBIN STERNGASS,

Plaintiffs/Appellants,

-vs-

ROBERT H. BOWMAN, Personally and as Building Inspector for the Town of Clarkstown, in Rockland County, N.Y.; THE TOWN BOARDS OF THE TOWN OF CLARKSTOWN, as constituted on July 11, 1979 and May 28, 1982 in their official capacity, personally, and individually; et al.

Defendants/Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

SUPPLEMENTAL APPENDIX:

Rose Sterngass, pro se;
Rubin Sterngass, pro se.
67 Ridge Road,
Valley Cottage, NY 10989
914-268-2558

HAROLD Y. MacCARTNEY, JR.
Deputy Town Attorney
Town of Clarkstown
Attorney for Defendants
10 Maple Ave.
New City, N.Y. 10956

12 pp

UNITED STATES DISTRICT COURT
SOUNTHERN DISTRICT OF NEW YORK
----------X

ROSE STERNGASS and RUBIN STERNGASS,

Plaintiffs,
pro se;

-against-

82 Civ.4303
(KTD)

ROBERT BOWMAN, et al;

Defendants.
----------X

MEMORANDUM &
ORDER

APPEARANCES:

ROSE STERNGASS & RUBIN STERNGASS
Plaintiff Pro Se
67 Ridge Road
Valley Cottage, New York 10989

HAROLD Y. MacCARTNEY, JR.
Deputy Town Attorney
Town of Clarkstown
Attorney for Defendants
10 Maple Avenue
New City, New York 10956

KEVIN THOMAS DUFFY, D.J.:

Rose and Rubin Sterngass, proceeding pro se, brought this suit under 42 U.S.C #1983 against the Town of Clarkstown , New York. the Town Board, and 17 individual town employees to obtain redress for alleged violations of their constitutional rights. The Sterngasses claim that the defendant's failure to approve or act upon certain proposed housing and sewer projects denied them due process and equal protection of the laws. Defendants have mover for summary judgment or judgment on the pleadings. Upon reviewing the Sterngasses' complaint and the papers submitted on the motion, I conclude that the Sterngasses lack standing to prosecute the claims they make. Accordingly, the defendant's motion, treated as a Rule 12 (b) (1) motion for dismissal, is granted.

The Sterngasses' complaint alleges five violations of constitutional rights. In "Violation No. 1" the Sterngasses allege that on July 3, 1979, Rubin Sterngass "as agent for the corporate (sic)," applied to the Clarkstown Zoning Board of Appeals (ZBA")for approval of a proposed high-density low income housing project to be built upon land not zoned for such a use. The Sterngasses allege that the ZBA has not yet acted upon Rubin's application (Appeal No. 1408), because Clarkstown's Building Inspector, the defendant Bowman, and several other town employees have conspired to keep the applica-

off of the ZBA's agenda. The Sterngasses allege that the conspiracy between Bowman and the other employees denied them due process and equal protection. The defendants' affidavits and supporting documents indicate that R.S.C.A. Realty Corp., Development Enterprises Inc., ARC Associates, and Mitchell and Cris Gusler, and not the Sterngasses, own the property involved in Appeal No. 1408. Indeed, the Sterngasses do not claim personal ownership of the property, but do indicate, in an affidavit submittted in opposition to the defendants motion, that Rubin Sterngass is the sole shareholder of one of the corporate owners.

"Violation No. 2" of the complaint alleges that the "Chief" of the Clarkstown Department of Environmental Control, the defendant Leslie Bollman, arbitrarily classified the proposed housing project as a "subdivision" subject to New York's State Environmental Quality Review "SEQR" Act. The Sterngasses allege that Bollman's determination requires them to complete the SEQR review process before the ZBA can act on the application. The Sterngasses apparently concede that they have not provided the documents required for SEQR review. They allege,

however, that SEQR does not apply to their project, and that Bollman's decision that it does apply violated their rights to due process and equal protection.

Prior to 1979, the Sterngasses operated for corporate property owners a different low income housing project at the site of the proposed new project. "Violation No. 3" partially concerns events occurring during the operation of the previous project. The Sterngasses allege that Building Inspector Bowman's citation of the property owners for housing code violations at the previous project, together with his refusal to permit ZBA action on the new project, "caused the denial of the benefits of Equal Housing guaranteed to all Americans". They also allege that Bowman denied them due process by conducting unscheduled inspections of the previous project and announcing to the tenants that the project might be closed due to housing violations.

In "ViolationNo. 4", the Sterngasses allege that Town Supervisor Theodore Dusanenko, Town Attorney John Costa, and Deputy Town Attorney Phillip Fogel conspired to prevent Town Board approval of a proposed improvement district which

would have constructed sewers and storm drains on the property covered by Appeal No. 1408 and certain adjacent realty. Although the Sterngasses do not specify what rights this conspiracy denied them, they apparently are alleging a denial of due process. The defendants' unrebutted documents and affidavits indicate that although R.S.C.A. Realty Corp. and Development Enterprises Inc., owned property within the proposed improvement district, the Sterngasses did not personally own any property within the district, nor did they, as individuals, sign the petition in support of the district.

"Violation No. 5" apparently alleges that Town Board members William Carey, John Maloney, and Charles Holbrook denied the Sterngasses due process by failing to stop an alleged conspiracy between Supervisor Dusanenko and an attorney in private practice to stop the improvement district discussed in "Violation No. 4".

The defendants argue that the Sterngasses lack standing to assert any of the claims they make. I agree. As a minimum contitutional mandate, Article III requires a plaintiff "to 'show that he personally has suffered some actual or threatened

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injury as a result of the putatively illegal conduct of the defendant.'" Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982) (quoting Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979) (emphasis supplied). Even if a plaintiff does show a degree of personal injury sufficient to satisfy Article III's "case or controversy" requirement, the Supreme Court has held, as a matter of prudential limitation on federal court jurisdiction, that a plaintiff "generally must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties." Warth v. Seldin, 422 U.S. 490, 499 (1975).

Although the Sterngasses frame their complaint in terms of claimed violations of their personal rights, the wrongs complained of in "Violations 1, 2, 4, and 5, if they occurred, operated not against the Sterngasses as individuals, but against the owners of the realty covered by Appeal No.1408. "Violation No. 1" alleges a conspiracy to prevent ZBA approval of:

the proposed housing project; "Violation No. 2" individual action by a town official to prevent ZBA approval; "Violation No. 4" a conspiracy to construction of sewers and drains on the property; and "Violation No. 5" willful failure by Town Board members to stop the latter conspiracy. In substance, "Violation" 1,2,4, and 5 contend that town officials and employees have unconstitutionally prevented the use and improvement of the property at issue. Clearly the property owners could bring suit to complain of such wrongs. The Sterngasses, however, do not personally own any property covered by Appeal No 1408 or within the proposed improvement district. The Sterngasses' personal rights thus have not been affected, and they may not sue under section 1983 to vindicate the rights of third-party property owners not present in this suit. See Javits v Stevens, 382 F. Supp. 131, 135 (S.D.N.Y. 1974) ("(O)ne may not sue under 42 U.S.C. #1983 for deprivation of another's constitutional rights." (footnote omitted). Accord, Carter v. Kamines, 560 F.2d 395 (8th Cir. 1977, cert. denied, 436 U.S. 948 (1978).; O'Malley v. Brierley, 477 F.2d 785 (3rd Cir. 1973).

Rubin Sternglass' status as sole shareholder of one of the corporate owners of the property covered by Appeal No. 1408 does not confer standing. As corporations are "persons" for purposes of the due process and equal protection clauses of the Fourteenth Amendment, Grosjean v. American Press Co., 297 U.S. 233, 244 (1936), a corporation may itself bring suit under section 1983 for alleged infringements of its rights to due process and equal protection. See, e.g., Fulton Market Cold Storage, Co. v. Cullerton, 582F2d 1071, 1079 (7th Cir. 1978), cert. denied, 439 u.S. 1121 (1979); Merco Properties, Inc. v. Guggenheimer, 395 F.Supp. 1322, 1325 (S.D.N.Y. 1975). The right of a corporation to bring suit under section 1983 eliminates the need for recognition of a right in shareholders to bring suit on the corporation's behalf. Accordingly, the federal courts consistently have held that a corporate officer or shareholder, regardless of his position or degree of share ownership, cannot prosecute his corporation's section 1983 claims. See Smith v. Martin, 542 F2d 688, 690 (6th Cir. 1976), cert. denied, 431 U.S. 905 (1977);

Erlich v. Glasner, 418 F2d 226 (9th Cir. 1969); Marty's Adult World of New Britian, Inc. v. Guida, 453 F. Supp. 810, 813 (D.Conn. 1978) ; Merco Properties, Inc. v. Guggenheimer, 395 F.Supp. 1322, 1325 (S.D.N.Y. 1975). This rule holds true even though the wrong to the corporation threatens the officer or shareholder with financial loss. Sawmill Prod., Inc. v. Town of Cicero, 477 F.Supp. 636, 639 (N.D. Ill. 1979); Marty's Adult World, 453 F.Supp. at 813. The Sterngasses do not allege an injury to themselves independent of the injury suffered by the corporate property owners. I thus find that the Sterngasses lack standing to assert the claims made in "Violations" 1, 2, 4, and 5.

"Violation No. 3" must be dismissed on several grounds. The first part of "Violation No.3" alleges that Building Inspector Bowman has "caused the denial of the benefits of Equal Housing guaranteed to all Americans." The Sterngasses never clarify whether Bowman allegedly violated the equal protection clause, the Fair Housing Act, or some other statute or act, nor do they specify precisely whose rights have been violated. The first part of "Violation No. 3" is so vague as to violate

Fed. R. Civ. P. 8 (a) (2) 's requirement that the pleader set out a "short and plain statement of the claim showing that (he) is entitled to relief". In any event, the Sterngasses do not allege infringment of their personal rights, but only of the rights of a large, ill-defined class of third persons. Plainly, the Sterngasses do not have standing to assert those persons' rights. In the second part of "Violation No. 3" the Sterngasses allege that Bowman's inspections of the previous housing project denied them due process. However, if the inspections violated the law, the rights infringed were those of the property owners, and not the Sterngassess'. It appears, moreover, that the last of Bowman's inspections that the Sterngasses complain of occurred on May 22, 1979 . As the Sterngasses commenced this action on July 1, 1982, their claims regarding the inspections are barred by the three-year limitations period provided by C.P.L.R. #214 (2). Pauk v. Board of Trustees of City Univ. of New York, 654 F.2d 856 , 861 (2d Cir. 1981), cert. denied, 102 S.Ct. 1631 (1982) .

Because I find that the plaintiffs have no standing, the defendants' other arguments need not be considered.

Accordingly, the complaint is dismissed.

SO ORDERED..

DATED: New York, New York
April 19, 1983

KEVIN THOMAS DUFFY, U.S.D.J.